

RESOLUTION NO. 20201029-027

WHEREAS, the Austin City Council passed Ordinance No. 20141211-050 in December 2014 to prohibit discrimination in housing based on an individual's source of income and to recognize the "inalienable rights of each individual to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, age, or source of income"; and

WHEREAS, during the 84th legislative session, the State of Texas passed Senate Bill 267 into law, which prohibits a municipality or county from protecting individuals from housing discrimination because an individual relies on federal housing assistance as a source of income; and

WHEREAS, the aforementioned prohibition in Senate Bill 267 on enforcement of municipal and county local ordinances and orders to protect against housing discrimination for those relying on federal housing assistance as a source of income remains in full force and effect; and

WHEREAS, the Austin City Council passed Resolution No. 20170817-054 in August 2017, directing the City Manager to prepare and initiate litigation, as appropriate, against the State of Texas to allow the City of Austin and other Texas municipalities to fight housing discrimination based on source of income; and

WHEREAS, as directed in Resolution No. 20170817-054, the City Manager initiated such litigation on behalf of the City of Austin in the United States District Court for the Western District of Texas, Austin Division, in a case styled and docketed as *City of Austin v. Ken Paxton, in his official capacity as Attorney General of Texas, et al.*, No. 1:17-cv-00843-SS (hereinafter, *Paxton SOI* suit), making the legal claims set forth in the City of Austin's First Amended Complaint filed on October 30, 2017 (*Paxton SOI* suit Docket No. 16); and

WHEREAS, the federal district court entered an Order on July 12, 2018 (*Paxton SOI* suit Docket No. 32), holding that it had jurisdiction in the case, dismissing two of the City of Austin claims, and declining to dismiss one of them; and

WHEREAS, in an interlocutory appeal taken by the State of Texas Defendants in the *Paxton SOI* suit, the United States Court of Appeals for the Fifth Circuit in a decision reported at 943 F.3d 993 (5th Cir. 2019) ("*Paxton* appeal"), held that the Eleventh Amendment to the United States Constitution meant that the district court lacked jurisdiction over the State of Texas Defendants; and

WHEREAS, in an Order on February 26, 2020 (*Paxton SOI* suit Docket No. 46), upon receipt of the mandate issued by the United States Court of Appeals for the Fifth Circuit in the *Paxton* appeal, the federal district court dismissed the *Paxton SOI* suit without prejudice on the ground that it lacked jurisdiction; and

WHEREAS, in a case styled and docketed as *City of Austin v. Ken Paxton*, Docket No. 19-1441, the City of Austin has petitioned the Supreme Court of the United States to issue a writ of certiorari to review and reverse the appeals court decision and judgment in the *Paxton* appeal; and

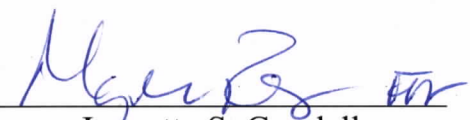
WHEREAS, the Austin City Council believes that the State of Texas' Senate Bill 267, codified as Section 250.007 of the Texas Local Government Code, does and continues to interfere with the City's moral and legal responsibility to protect our residents from housing discrimination; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

In the event that the City succeeds in obtaining review and a reversal in the pending Supreme Court matter, and as soon as reasonably possible after such success, the City Manager is hereby directed to continue pursuit of the remaining claim in the *Paxton SOI* suit, as well as to pursue such other claims as may be made, in good faith legal judgment, against the State of Texas and such of its officials, including the Attorney General of Texas, as may be appropriate to allow the City of Austin to implement and enforce Ordinance No. 20141211-050, by either re-opening or re-filing the *Paxton SOI* suit or by instituting a newly filed lawsuit in the same federal district court.

ADOPTED: October 29, 2020

ATTEST:


Jannette S. Goodall
City Clerk